



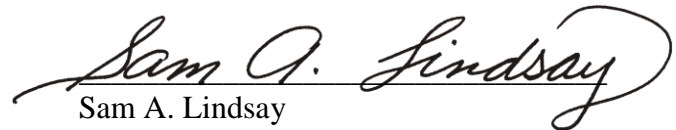
10478 and *United States v. Wheeler*, No. 17-10607. For that reason, the Government requested that the court defer its decision on this matter until those issues are resolved.

On June 5, 2018, Petitioner filed Movant's Objections to Report and Recommendation (Doc. 22) in which he contends that he agrees with the magistrate judge's ultimate conclusion, however; he objects to the conclusion that robbery is divisible into two separate offenses. He further contends that there is no need to reach a conclusion regarding his aggravated assault conviction because the Report's conclusion regarding robbery by bodily injury is sufficient to warrant granting the motion to vacate.

In *United States v. Burris*, No. 17-10478, 2018 WL 3430086, at \*10 (5th Cir. July 16, 2018), the Fifth Circuit held that robbery by bodily injury under the Texas statute is no longer a violent felony. Accordingly, pursuant to binding Fifth Circuit authority, Petitioner's conviction for robbery under the Texas statute is not a violent felony under the ACCA. Therefore, the court will grant Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

Having reviewed the pleadings, file, record in this case, and Report, and having conducted a de novo review of the portion of the Report to which objections were made, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court as supplemented by this order. Accordingly, the court: (1) **overrules** the Government's objections in light of recent Fifth Circuit authority; (2) **overrules as moot** Petitioner's objections; (3) **grants** Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 2); and (4) **vacates** the original judgment and sentence (Doc. 49) issued in Criminal Action No. 3:12-CR-0126-L (1) in accordance with this order and the *Burris* decision. The court will schedule a resentencing hearing by separate order.

**It is so ordered** this 20th day of July, 2018.

  
Sam A. Lindsay  
United States District Judge